

AMERICAN ARBITRATION ASSOCIATION

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In the Matter of the Arbitration between:

**FRATERNAL ORDER OF POLICE,
LODGE No. 5**

-AND-

**AWARD
AND OPINION**

CITY OF PHILADELPHIA, PA

Docket No. 14 390 00276 12

(P/O Kendall Norman II #9653 PR # [REDACTED] Discharge)

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BEFORE: ERNEST WEISS, ARBITRATOR

APPEARANCES: For the Union: MARK L. GELMAN, Esq.
 JENNINGS SIGMOND, P. C.

 For the City: JOSHUA BRAND, ESQ.
 ASSISTANT CITY SOLICITOR
 CITY OF PHILADELPHIA

**ISSUE: Was the disciplinary discharge of PO Kendall Norman II #9653
 PR# [REDACTED] for just cause and if not, what shall be the remedy?**

PRELIMINARY STATEMENT

Having been selected in accordance with the provisions of the Collective Bargaining Agreement between the above parties, I conducted an arbitration hearing on February 7, 2013 at the offices of the American Arbitration Association in Philadelphia, PA, at which time the parties were afforded an opportunity to present evidence and argument in support of their respective positions.

BACKGROUND

PO Kendall Norman, II the grievant herein, was appointed 11/20/2006 and dismissed from his position of Police Officer with the City of Philadelphia upon being ordered by the Police Commissioner to be placed on a thirty (30) day disciplinary suspension on May 25, 2011, with intent to dismiss. On that day he was interviewed by Lt. Terrance Gibbs of the Internal Affairs Division and after conferring with FOP counsel Gerald S. Stenshine, Esq. he listened to a three page statement presented by Lt. Gibbs, describing the results of the IAD investigation. At the conclusion, PO Norman was asked "Do you want to say anything in response to these charges"(C7) and he declined.

A grievance was submitted by the FOP on behalf of PO Norman, claiming that there was no just cause for the "capital punishment" of discharge. Since the parties were unable to reach a settlement of the grievance, the issue came before me for final and binding resolution in accordance with the Collective Bargaining Agreement between the parties and under the rules of the American Arbitration Association.

STATEMENT OF CHARGES FILED

Conduct Unbecoming

SECTION 1-§010-10: Making a false entry in any Department record or report

SPECIFICATION: In that you submitted a memorandum, dated March 9, 2011, requesting the usage of your remaining balance of 27 military leave days in order to continue to fulfill your military obligations to the United States Air Force at McGuire, AFB, in New Jersey. A copy of activation orders and memorandum on official United States Air Force Reserve Command stationery accompanied your memorandum. The activation orders and memorandum were determined to be false. An interview of MSGT S [REDACTED] I [REDACTED] and Mr. W [REDACTED] B [REDACTED] by SA B [REDACTED] C [REDACTED] AFOSI, verified that these documents were false. Mr. B [REDACTED] stated he was in Virginia, attending a Naval Security Training Seminar between February 28, 2011 and April 29, 2011, and thus, his signature was forged on the memorandum submitted by you. In addition, you submitted another memorandum, dated March 9, 2011, requesting to be carried on a Military Leave of Absence to fulfill orders you received for deployment to Bagram, Afghanistan from April 17th 2011 to March 9th 2012. Your two memoranda included information that would mislead the Philadelphia Police Department into believing that you were activated, when in fact, you were aware that you had been officially charged with Fraud and related offenses by the United States Air Force and would be receiving the verdict during the military proceedings on March 11, 2011. On March 11, 2011, you were convicted of the charges of conspiracy, larceny and filing a false claim related to reserve travel voucher fraud and immediately confined to begin serving your sentence of not less than 6 months but no more than 10 months at Monmouth County Correctional Facility in New Jersey.

ARTICLE 1 Conduct Unbecoming an Officer

SECTION 1.00 Unspecified.

SPECIFICATION: In that on June 14, 2009, SA I [REDACTED] F [REDACTED], USAFOSI, notified Internal Affairs Division that an Investigation was opened for Fraud and related offenses against you. In particular, between January 9, 2008 and March 12, 2009, at or near Joint Base McGuire-Dix-Lakehurst, New Jersey, you knowingly and fraudulently prepared and submitted travel vouchers for billeting accommodations. You knew the documented information regarding lodging in these vouchers was False and, thus, stole an aggregate value of more than \$500 from the United States Air Force. On Monday, March 14, 2011, SAIC M [REDACTED] L. W [REDACTED], USAFOSI, notified Lieutenant Terence Gibbs #420, Internal Affairs Division, that you had been convicted of conspiracy, larceny, and filing a false claim related to reserve travel voucher fraud. As a law enforcement officer, an essential duty is serving as a credible witness during any legal proceeding. Your conviction In these military proceedings brings in doubt your credibility in serving as a witness in any legal proceedings.

ARTICLE I SECTION 1.75

Conduct Unbecoming an Officer

Repeated violations of Departmental rules and regulations, and/or any other course of conduct indicating that a member has little or no regard for his/her responsibility as a member of the Police Department.

SPECIFICATION: On June 24, 2009, SA I [REDACTED] F [REDACTED] USAFOSI, notified Internal Affairs Division that an investigation was opened for Fraud and related offenses against you. In particular, between January 9, 2008 and March 12, 2009. At or near Joint Base McGuire-Dix-Lakehurst, New Jersey, you knowingly and fraudulently prepared and submitted travel vouchers for billeting accommodations. You knew the documented information regarding lodging in these vouchers was false and; thus, stole an aggregate value of more than \$500 from the United States Air Force. On Monday, March 14, 2011, SAIC M [REDACTED] L. W [REDACTED] USAFOSI, notified Lieutenant Terence Gibbs #420, Internal Affairs Division, that you had been convicted of conspiracy, larceny, and filing a false claim related to reserve travel voucher fraud. You were sentenced to a Bad Conduct Discharge, reduction to E1, confinement for 6 months and a fine of \$10,000 (with 4 months contingency confinement). On Tuesday, March 15, 2011, SA Fortune related that you were currently in confinement at Fort Monmouth, New Jersey, having begun your 6 month sentence. SA Fortune additionally explained that you had to pay the fine of \$10,000 within the six month sentence or you would serve an additional four months confinement. By your actions, namely, conspiring with another to defraud the United States Government, you have indicated that you have little or no regard for your position as a member of the Philadelphia Police Department. Therefore, you will be dismissed after being placed on a thirty day suspension.

ARTICLE IV Disobedience

SECTION 6-§003-10 : Failure to immediately notify the Department about any involvement in criminal litigation as the defendant

SPECIFICATION: In that on or about January, 2011, you were officially notified by the United States Air Force of charges being brought against you for conspiracy, larceny, and filing a false claim related to reserve travel voucher fraud as a result of criminal actions during your service with the United States Air Force Reserves. On March 11, 2011, you were convicted of all these charges. The officer court members sentenced you to a Bad Conduct Discharge, reduction to E-1, confinement for 6 months and a fine of \$10,000, with further confinement until the fine is paid but for not more than 4 months in addition to the 6 months adjudged confinement. On March 15, 2011, your commanding officer, Captain D [REDACTED] M [REDACTED] # [REDACTED], was interviewed in reference to your duty status. A check of the DAR indicated that you had been carried Military Leave since March 9, 2011. Captain MacDonald stated that he had not been notified by you or your platoon commander that were involved in any criminal proceedings as a defendant, that you had been convicted of the offenses listed, or that you were confined at Monmouth County Correctional Facility in New Jersey.

This continuous course of conduct indicates that you have little or no regard for your responsibility as a member of the Philadelphia Police Department. These acts are in violation of the Department's Disciplinary code.

Based on the investigation conducted and the information available at this time, the Police Commissioner has ordered that you be suspended for thirty (30) days with the intent to dismiss.

WITNESS : Lieutenant Terence Gibbs #420, Internal Affairs Division

(Kendall Norman II elected not to respond to the above charges.)

CONTENTIONS OF THE CITY

The City argued in relevant part that the grievant was found guilty of defrauding the United States Air Force as well as the Philadelphia Police Department, his employer. An investigation by the Air Force revealed that he submitted false vouchers indicating that he stayed at the Candelwood Suite Hotel in Mount Laurel, NJ and claiming expenses for both lodging and millage in excess of \$12,000.00

He was given a Court Marshal and found guilty of "conspiracy, larceny and filing false claims related to travel voucher fraud. He was sentenced to a Bad Conduct Discharge, Reduction to E-1 and confinement to 6 months with a fine of \$10,000.00 to be paid during the 6 months of confinement. Failure to make the payment would result in an additional confinement of 4 months.

The City further pointed out that on or about March 9, 2011 PO Norman presented a fraudulent memorandum and activation orders on Air Force stationary indicating to the Philadelphia Police Department requesting the use of his remaining 27 military leave days falsely claiming that he was being deployed to Bagram, Afghanistan. He requested to be carried on Military Leave of Absence status to carry out the false orders containing forged signatures.

The City also argued that as a result of his conviction and serving 6 months in jail he could never testify legitimately in a court of law as a Police

Officer. Therefore, the City insisted that PO Norman II was discharged for just cause and his grievance should be dismissed.

CONTENTIONS OF THE FOP

The FOP argued in relevant part that the facts in this case are convoluted. These are unique events comingled between regulations of the US Air Force, where the grievant served as a reserve and the Philadelphia Police Department, where the grievant was employed. His off-duty behavior in the Air Force reserves, where the grievant was adjudicated under the Military Code of Justice, cannot be comingled with the rules and regulations of the Police Department, where the grievant had a completely clean disciplinary record.

The FOP pointed out that the grievant was misled by the Air Force when he was asked to testify in the voucher fraud case. He was not informed that he was also under investigation in the case.

Finally the FOP concluded that this case turns on credibility and the substance of Court Marshal is not clear. It is not known what specifically that tribunal relied upon when they issued the guilty conviction and the jail sentence which the grievant served. However, the FOP pointed out that the grievant is still a member of the reserve unit. Also, it argued that the grievant's testimony was reasonable, truthful and that he found his deployment documents in the Air Force files.

The FOP argued that the City did not show that there was just cause for the dismissal of PO Kendall Norman, and that he should be reinstated to his former position with the Police Department and made whole.

DISCUSSION AND OPINION

The FOP forcefully argued that the grievant's behavior constitutes off-duty conduct and the rules of the Police Department should not be comingled with military justice.

However, the grievant's sworn testimony at the instant arbitration hearing was not convincing. There was no question that he became involved in submitting more than \$12,000.00 in false claims for lodging and travel to the US Air Force which constitutes stealing money from the Federal Government. He knowingly and fraudulently prepared and submitted false travel vouchers. Such conduct is clearly unbecoming of a law enforcement officer. He was convicted and sentenced to a bad conduct discharge, confinement for 6 months, to pay a fine of \$10,00.00 to be paid during his confinement and to serve additional 4 months if not paid during his 6 months of confinement.

Additionally, on or about March 9 2011, the grievant submitted false military activation orders and a memorandum to the Personnel Officer of the Philadelphia Police Department, requesting the balance of his remaining 27 days military leave and claiming that he was being deployed to Bagram, Afghanistan. The activation orders and his memorandum were determined to be false and the signatures on the orders were forged. His deployment never happened and two days later he was court marshaled, convicted and began his 6 month jail sentence the same day. His own testimony at the instant arbitration hearing revealed that he was also seeking to defraud his employer as well when he asked to be carried on military leave and submitted forged deployment documents.

Commissioner Charles H. Ramsey, testified in relevant part that, after a review of the documents in this case and the results, he was compelled to exercise his discretion to impose the penalty of dismissal. He properly considered the deliberate dishonesty and lack of integrity of a police officer, to be a very serious

and intolerable infraction, constituting conduct unbecoming of an officer of the law.

Therefore, having thoroughly considered all the evidence including the arguments and allegations of both parties I have determined, for the above stated reasons, that grievant PO Kendall Norman II was discharged for just cause.

His grievance is therefore denied and I make the following Award:

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The undersigned arbitrator, having been designated in accordance with the Arbitration Agreement entered into by the above parties, and having duly heard the proofs and allegations of the parties, AWARDS as follows:

The disciplinary discharge of PO Kendall Norman II #9653 was for just cause.

His grievance is denied.



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ERNEST WEISS, ARBITRATOR

STATE OF: NEW JERSEY

COUNTY OF: SOMERSET

On this 11th day of February, 2013, before me personally came and appeared Ernest Weiss, to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged that he executed same.
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires May 3, 2005